



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

May 22, 2025
SPR25/1305

Christine M. Wilda
Associate Chancellor for Compliance
University of Massachusetts, Amherst
340F Whitmore Building
181 President's Drive
Amherst, MA 01003

Dear Ms. Wilda:

I have received the petition of Jonathan Gerhardson appealing the response of the University of Massachusetts Amherst (University) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 26, 2025, Mr. Gerhardson requested the following records with a date range of January 29, 2025 to March 26, 2025:

- [1] Any inquiries or requests for data made from or on behalf of the Department of Education Office of Civil Rights.
- [2] The university's response to any such inquiries.
- [3] Metadata for any responsive records described above.

In an email to the University on April 3, 2025, Mr. Gerhardson modified his request stating “amend the date on [the request] to be March 10 to present[.]”

Previous Appeal

This request was the subject of a previous appeal. See SPR25/1073 Determination of the Supervisor of Records (April 28, 2025). In my April 28th determination, I learned that the University intended on providing a supplemental response. The University provided a response on May 8, 2025. Unsatisfied with the University's response, Mr. Gerhardson petitioned this office and this appeal, SPR25/1305, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public

records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Att'y for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The University's May 8th Response

In its May 8, 2025 response, the University states it is "withholding investigatory records that are part of the Department of Education, Office for Civil Rights, OCR Case No. 01-24-2243. Because of this investigation, Exemption (f) of the Massachusetts Public Records Law - the Investigatory Exemption - applies to this request. See G. L. c. 4, § 7(26)(f). As such, we will not be providing records at this time...."

Exemption (f)

Exemption (f) permits the withholding of:

investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest

G. L. c. 4, § 7(26)(f).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Att'y Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979). Exemption (f) invites a "case-by-case consideration" of whether disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." See

Reinstein, 378 Mass. at 289-90.

Although the University states that the records pertain to an active investigation, it is unclear how the records can be withheld in their entirety. Specifically, the University did not provide any supporting information to demonstrate how disclosure of any segregable portion of the responsive records “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest[,]” as required under Exemption (f). See Reinstein, 378 Mass. at 289-90 (the statutory exemptions are narrowly construed and are not blanket in nature). Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). The University must clarify this matter.

In addition, the University did not identify the records, categories of records or portions of records in its possession that it intends to withhold from disclosure. To deny access to a record under the Public Records Law, a records access officer must identify the record, categories of records, or portions of the record it intends to withhold. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3)(c)(4). Therefore, the University must identify the record(s) it has in its possession that the University withheld under Exemption (f).

Conclusion

Accordingly, the University is ordered to provide Mr. Gerhardson with a response to his request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us.

Sincerely,



Manza Arthur
Supervisor of Records

cc: Jonathan Gerhardson